

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**SPECIALIZED MACHINERY  
HAULING AND RIGGING, LLC,**

**Case No. 3:08-cv-445**

**Plaintiff,**

**Judge Thomas M. Rose**

**-v-**

**D&L TRANSPORT, LLC, et al.,**

**Defendants.**

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**ENTRY AND ORDER DISMISSING DEFENDANT D&L TRANSPORT  
WITHOUT PREJUDICE AND TERMINATING THIS CASE**

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This matter arises from the delivery of a recycler oven from Quebec, Canada to Fort Meade, Florida by Plaintiff Specialized Machinery Hauling and Rigging, LLC (“Specialized Hauling”). D&L Transport, LLC (‘D&L”), Drum Recyclers, Inc. (“Drum Recyclers”), Robert Kilpatrick (“Kilpatrick”) and John Does 1-99 are named in Specialized Hauling’s Complaint as the Defendants. Defendants John Does 1-99 are the unknown owners, partners, agents and/or stakeholders of Drum Recyclers. (Compl. ¶ 5.)

Specialized Hauling’s Complaint against Kilpatrick and Drum Recyclers has been dismissed due to a lack of personal jurisdiction. (Doc. #13.) Further, Specialized Hauling was given until not later than thirty (30) days after April 20, 2009, to show cause as to why its Complaint against D&L should not be dismissed for failure to obtain service on D&L. The basis for the Show-Cause Order is that Fed. R. Civ. P. 4(m) requires the Court to dismiss an action without prejudice in which service is not made within 120 days of filing a complaint.

The thirty (30) days has run and Specialized Hauling has not shown cause. There is no

record that D&L has been served, more than 120 days has run since Specialized Machinery's Complaint was filed, and Specialized Machinery has been given notice that service on D&L is required within 120 days of the filing their Complaint. Therefore, Specialized Machinery's Complaint against D&L is dismissed without prejudice. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

**DONE** and **ORDERED** in Dayton, Ohio this Twenty-Sixth day of May, 2009.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT

JUDGE

Copies furnished to:  
Counsel of Record